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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,283	10/28/2003	Robert Richard Dykstra	9086M	3960
27752 7590 07/24/2008 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
MOSS, KERI A				
ART UNIT		PAPER NUMBER		
1797				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/695,283

**Applicant(s)**

DYKSTRA ET AL.

**Examiner**

KERI A. MOSS

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 6-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 3/31/08

### **DETAILED ACTION**

1. Applicants' Amendment filed March 31, 2008 is hereby acknowledged. Claims 1 and 6-9 are pending.

#### ***Response to Arguments***

2. Applicants' amendments have raised new 35 USC 112, 2<sup>nd</sup> paragraph issues.
3. Applicant's arguments with respect to claims 1 and 6-9 have been considered but are moot in view of the new ground(s) of rejection.

The previous rejections have been withdrawn in light of applicants' amendments and arguments.

New grounds of rejection under Rollat et al. in view of Moore et al., in addition to Hood et al in view of Rollat et al and Moore et al have been added, as necessitated by Applicant's amendments to the claims.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims **1 and 6-9** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "sufficient" in claim 1 is a relative term which renders the claim indefinite. The term "sufficient" is not defined by the claim, the specification does not

provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The amount of sodium sulfate in the composition system is indefinite.

In addition, it is unclear whether applicant is claiming a viscosity. As claim 1 is presently worded, applicant has only claimed an amount of sodium sulfate and has not claimed a viscosity.

Finally, Applicant's amended language is worded as though the claim is a method of making a product; however, the preamble indicates the applicant is claiming a product. Clarification is needed.

#### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rollat et al. (US Pub 2003/0017125) in view of Moore et al. (USP 5,866,110). Rollat teaches a non-encapsulated benefit agent delivery system comprising an aqueous dispersion [0017] of a water-insoluble polymer particle [0017] and a benefit agent [0053] wherein the polymer particle comprises at least one cationic monomer and one or more non-cationic monomers [0052]-[0053]. The polymer and the benefit agent are non-polymerically associated in a liquid matrix [0048]. The RF exhibited by the benefit agent is inherently at least about 1.5 as the benefit agent is one used by applicant in the instant invention. The polymer particle inherently has a first affinity for a low kovats

index perfume raw material having a kovats index of from about 1000 to about 1400 and a second affinity for a high kovats index perfume raw material having a kovats index of greater than about 1700, the first affinity being at least about 2 times greater than the second affinity as measured by Affinity Test Protocol III, as the polymer particle is made as taught by applicants in the instantly claimed invention.

7. Rollat et al. teach that the composition contains thickening agents, which, like sodium sulfate, would adjust the viscosity of the composition ([0053]). Yet Rollat et al. do not name that thickening agent, and specifically do not teach that the composition comprises sodium sulfate.

8. Moore et al. teaches using sodium sulfate as a thickening agent for a benefit agent delivery system (Column 3 Tables 1 and 2). Moore further teaches that sodium sulfate adjusts the viscosity to a range between 5,000-11,000 cps. This is the preferred embodiment of the benefit agent delivery system. It would have been obvious for one of ordinary skill in the art to use sodium sulfate in a benefit agent delivery system in order to gain the predictable result of thickening the delivery agent and adjusting the viscosity to between 5,000-11,000 cps.

9. Claims **1 and 6-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hood et al. (US Pub 2002/0058015 A1) in view of Rollat et al. (US Pub 23/0017125) and further in view of Moore et al. (USP 5,866,110). Hood teaches a non-encapsulated benefit agent delivery system comprising an aqueous dispersion

(abstract) of a water-insoluble polymer particle [0027] and a benefit agent [0020] wherein the polymer particle comprises at least one cationic monomer and one or more non-cationic monomers [0027]. The polymer and the benefit agent are non-polymerically associated in a liquid matrix [0027]. The RF exhibited by the benefit agent is inherently at least about 1.5 as the benefit agent is one used by applicant in the instant invention. The polymer particle inherently has a first affinity for a low kovats index perfume raw material having a kovats index of from about 1000 to about 1400 and a second affinity for a high kovats index perfume raw material having a kovats index of greater than about 1700, the first affinity being at least about 2 times greater than the second affinity as measured by Affinity Test Protocol III, as the polymer particle is made as taught by applicants in the instantly claimed invention. The LKI perfume raw materials collectively provide a first Average Response Factor ( $ARF_{LKI}$ ) and the HKI perfume raw materials collectively provide a second Average Response Factor ( $ARF_{HKI}$ ); the perfume polymeric particle having a ratio of  $ARF_{LKI}/ARF_{HKI}$  of at least about 1.2 (Examples 13 and 17).

Hood teaches a method for making a granular or liquid composition containing a non-encapsulated benefit agent delivery system comprising at least one cationic monomer and one or more non-cationic monomers to the matrix and adding a benefit agent selected from the group consisting of flavor ingredients and perfume raw materials and mixtures thereof to the matrix; wherein the polymer particle and benefit agent are added as separate, discrete components from different sources to form the

benefit delivery system and are not polymerically associated in said system (Examples 13 and 17).

Hood does not expressly teach that the dispersion additionally comprises a colloidal stabilizer.

Rollat et al teaches the use of colloidal silica in order to sterically stabilize polymer particles in a dispersion [0048]. This colloidal stabilizer limits the particles' coalescence and yields uniform particles, thereby preventing aggregation of the particles and enabling a more homogeneous dispersion [0048]. It would have been obvious for one of ordinary skill in the art to modify the benefit agent delivery system of Hood by adding a colloidal stabilizer as taught by Rollat in order to sterically stabilize the particles and prevent aggregation in order to ensure a more homogenous dispersion.

10. Rollat et al. teach that the benefit agent delivery system contains thickening agents, which, like sodium sulfate, would adjust the viscosity of the composition ([0053]). Yet Rollat et al. do not name that thickening agent, and specifically do not teach that the composition comprises sodium sulfate.

11. Moore et al. teaches using sodium sulfate as a thickening agent for a benefit agent delivery system (Column 3 Tables 1 and 2). Moore further teaches that sodium sulfate adjusts the viscosity to a range between 5,000-11,000 cps. This is the preferred embodiment of the benefit agent delivery system. It would have been obvious for one of ordinary skill in the art to use sodium sulfate in a benefit agent delivery system in order

to gain the predictable result of thickening the delivery agent and adjusting the viscosity to between 5,000-11,000 cps.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KERI A. MOSS whose telephone number is (571)272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Keri A. Moss/  
Examiner, Art Unit 1797

/Maureen M. Wallenhorst/  
Primary Examiner, Art Unit 1797